

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF THE
NORTH TOWER OF THE MINILLAS
GOVERNMENT COMPLEX SITE

AIREKO CONSTRUCTION, CORP.,
Respondent,

Proceeding under Sections 106(a)
of the Comprehensive
Environmental Response,
Compensation, and Liability Act
of 1980, as amended, 42 U.S.C.
§§ 9606(a).

Index Number
CERCLA-02-2013-2011

ADMINISTRATIVE ORDER FOR
REMOVAL ACTION

I. Jurisdiction and General Provisions

1. This Administrative Order is issued to Aireko Construction, Corp. (hereinafter, "Respondent") by the United States Environmental Protection Agency ("EPA") and requires Respondent to perform removal activities in connection with the North Tower of the Minillas Government Complex (the "Site"), located in San Juan, Puerto Rico.
2. This Order is issued to Respondent by EPA pursuant to the authority vested in the President of the United States under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Federal Register 2926, January 29, 1987). This authority was further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B and to the Director of the Emergency and Remedial Response Division in Region 2 by Regional Delegation R-1200, dated November 23, 2004.
3. EPA has notified the Commonwealth of Puerto Rico of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. Parties Bound

4. This Order shall apply to and be binding upon Respondent and its directors, officials, employees, agents, successors, and assigns. No change in the status or control of Respondent shall alter Respondent's responsibilities under this Order. Respondent is responsible for carrying out all activities required by this Order.

5. Until EPA notifies Respondent under Paragraph 94 that the Work has been completed, Respondent shall provide a copy of this Order to any successor before a controlling interest in Respondent's assets or property rights are transferred to any successor.

III. Definitions

6. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order or in an attachment to this Order, the following definitions shall apply:

a. "Consent Order" shall mean the Administrative Order and Order on Consent entered with the Public Building Authority ("PBA") and Enviroresources, Inc. (the "Performing Parties"), Index Number CERCLA-02-2012-2022, and all appendices attached hereto;

b. "Day" shall mean a calendar day unless otherwise expressly stated. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, Commonwealth or Federal holiday, the period shall run until the close of business on the next working day;

c. "Effective Date" means the date specified in Paragraph 95;

d. "Order" shall mean this Administrative Order, Index Number CERCLA-02-2013-2011, and all appendices attached hereto;

e. "Performing Party" or "performing Parties" shall mean the Public Building Authority and/or Enviroresources, Inc.;

f. "Party" or "Parties" means EPA and/or Respondent;

g. "Site" shall mean the North Tower of the Minillas Government Complex and its related cargo area ("Cargo Area"), located in De Diego Avenue, San Juan, Puerto Rico, and any areas affected by contamination emanating there from;

h. "Waste" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2), or (3) above; and

i. "Work" means all work and other activities that Respondent is required to perform pursuant to this Order.

IV. Findings of Fact and Conclusions of Law

7. The Site includes a portion of the Minillas Governmental Complex ("Minillas Complex") in De Diego Avenue, Municipality of San Juan, Puerto Rico, which consists of two Towers, referred to as the North and South Towers. The Minillas Complex also includes a third building housing the Puerto Rico Government Development Bank. Performing Party PBA is the owner and operator of the Minillas Complex and is responsible for designing, constructing, and providing maintenance to public buildings, including schools, hospitals, and government buildings, such as the Minillas Complex.

8. PBA began a renovation project of the North Tower of the Minillas Complex on or around 2010. The renovation project was ongoing at least as recently as May 13, 2012.

9. Performing Party Enviroresources, Inc. was at all relevant times to this Order under contract with both Aireko and PBA, for the asbestos abatement work in the North Tower of the Minillas Complex.

10. Respondent is a corporation duly authorized to do business in Puerto Rico. Respondent was and is at all relevant times to this Order under contract with PBA for the asbestos demolition and renovation in the North Tower of the Minillas Complex.

11. An EPA "Notification for Demolition and Renovation" Form was submitted by PBA on May 7, 2012 at 5:01pm. This form was signed by Leonardo Torres Berrios, PBA Legal Services Director. According to 40 C.F.R. § 145(b), a period of ten (10) working days must elapse after the submission of the notification before commencing any asbestos removal. This period expired on May 21, 2012.

12. On May 14, 2012, EPA received a complaint alleging the following: employees of Respondent had disposed asbestos containing materials ("ACM") from the renovation activities occurring in the North Tower of the Minillas Complex in an outside Cargo Area; the asbestos removal was being performed by un-trained and un-certified personnel; and construction debris from the North Tower, containing asbestos, was removed on Sunday, May 13, 2012, and disposed at the building's Cargo Area using the elevators and the service stairways.

13. EPA personnel were informed by PBA that demolition and renovation activities, which involved the handling of what appeared to be ACM, had taken place at the Site, specifically on the 9th floor, on Sunday, May 13, 2012, and that these activities were performed by Respondent and by a subcontractor. PBA confirmed that the materials were transferred from the 9th floor of the Site to the Site's Cargo Area (outside of the building) using elevators and the service stairways, and the materials were eventually returned to the 9th floor by PBA's contractor Enviroresources, reportedly at the request of Respondent, with PBA's knowledge.

14. On May 15, 2012, EPA conducted an inspection under the Clean Air Act ("CAA") that revealed the following findings:

- a. heavy dust buildup was observed on the walls, steps, hand rails, and other areas; in general, all surfaces exhibited large amounts of dust;

b. the heating, ventilation, and air-conditioning (HVAC) system was operating while heavy construction work was being performed;

c. ACM that was being improperly abated by un-trained and un-supervised individuals. Improper abatement procedures included not adequately wetting the material so as to prevent emission of ACM fibers;

d. no emission control devices were in place;

e. ACM, which was returned from the Cargo Area to the 9th floor, was stored in three piles, and only one of these piles had a precautionary label concerning the temporary storage of ACM. The ACM piles were not adequately wet nor sealed in leak-tight containers;

f. Construction workers were working without wearing proper respiratory protection equipment;

g. the Cargo Area of the North Tower, where the ACM from the demolition and renovation activities that took place on May 13, 2012 was initially taken, included materials consisting of mixed construction debris that were covered with a plastic sheet and were not adequately wet; and

h. essential information concerning the asbestos renovation project, including building survey reports, asbestos management plans and permitting information, was not presented at the time of the inspection.

15. On May 16, 2012, two EPA inspectors, including an EPA On-Scene Coordinator ("OSC"), conducted a follow-up inspection of the Site (inside and outside of the building), under the authority of the CAA 42 U.S.C § 7401 et seq., and CERCLA, to address what was believed to be an imminent release of asbestos fibers into the outside environment. EPA conducted sampling to determine the presence of ACM at the North Tower.

16. A total of twenty-one bulk, dust, and wipe samples were taken in strategic locations to determine the presence of ACM in areas throughout the building. Sampling results revealed the presence of asbestos fibers outside the building in the Cargo Area, as well as inside the building in walls, floors, elevators and functional spaces, suggesting widespread contamination.

17. The OSC issued a Field Notice of Federal Interest ("FNFI") to the PBA on May 20, 2012. The OSC indicated in the FNFI that the release and/or threat of release were discovered on May 14, 2012 in the North Tower. Such release consisted of ACM in a friable form, and in high concentrations. Because of high concentrations of ACM at the main entrance of the North Tower, he recommended restricting access to the building. The Puerto Rico Environmental Quality Board ("EQB") concurred with the recommendation. PBA notified all the other government agencies with offices in the building and requested them to activate their Continuity of Operations Plans to prevent/minimize interruptions of their respective government services.
18. Since the issuance of the FNFI, emergency removal activities were conducted by EPA to prevent the ACM, located in the ground open level of the building, from being released to the environment. EPA's work included mitigating the ACM in the Cargo Area (wetting, collecting, encapsulating and storing the waste) and removal of contaminated dust at the ground entrance of the building. With EPA oversight, PBA cleaned up the Cargo Area corridor and the ground lobby area and removed bags of debris and sealed the stairway entrance of each of the floors of the building.
19. EPA and Performing Parties executed the Consent Order, effective September 29, 2012, which required the Performing Parties to implement certain response activities at the Site. A certain portion of the work required under the Consent Order has been performed by the Performing Parties to date.
20. Asbestos is a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
21. The route of exposure to the asbestos at the Site is through inhalation. Migration of asbestos could occur through, among other things, inadvertent transfer of asbestos particles beyond the North Tower Building on workers' clothing, hair, or shoes. Weather conditions, especially wind, could also make the asbestos more friable and lead to asbestos particles being transferred beyond the Minillas Complex.
22. Exposure to ACM can cause a variety of adverse human health impacts. Asbestos exposure may cause two primary classes of health effects. The first is asbestosis, a non-malignant disease characterized by a progressive scarring of the lung and

pleura. The second includes potential carcinogenic effects, including development of mesothelioma and lung cancer.

23. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

25. Respondent operated at the Site at a time of disposal of a hazardous substance at the Site. Respondent is a responsible party with respect to the Site, pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

26. The presence of asbestos, both in the air and throughout the Site, constitutes a "release" or threat of "release" of a hazardous substance into the environment, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

27. EPA has determined that a removal action at this Site is necessary to address the threat to human health and the environment posed by the presence of hazardous substances located in the soil at the Site.

V. DETERMINATIONS

28. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of NCP. These factors include, but are not limited to, the actual or potential exposure to nearby human populations from a hazardous substance or pollutant or contaminant and the unavailability of other appropriate federal or Commonwealth response mechanisms to respond to the release.

29. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

30. The actions required by this Order are necessary to protect the public health or welfare or the environment, are in the public interest, and are consistent with CERCLA and the NCP.

VI. ORDER

31. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the administrative record supporting the removal action for this Site, EPA has determined that the actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and it is hereby ordered that Respondent undertake a removal action at the Site, as set forth in Subsection B (Description of Work), below which includes, but is not limited to, decontaminating impacted areas identified previously during building characterization sampling, removal of hazardous substances from structures and containers and proper off-Site disposal of the contaminated material and waste generated during the building decontamination at the Site in accordance with the requirements specified below. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.

A. Designation of Contractor and Designated Project Coordinator

32. The Performing Parties have selected as their Designated Project Coordinator Samuel Quiñones of SAQ, Environmental Engineers, Inc., and EPA has approved that selection. Respondent shall coordinate and cooperate with the Performing Parties and the selected Project Coordinator. Respondent, in cooperation and coordination with the Performing Parties, may also designate Samuel Quiñones as its Designated Project Coordinator if Respondent and the Performing Parties agree to Respondent so designating Samuel Quiñones as such. If such an agreement cannot be reached, within seven (7) days after the Effective Date of this Order, Respondent shall select a coordinator, to be known as Respondent's Designated Project Coordinator, and submit the name, address, qualifications and telephone number of the Respondent's Designated Project Coordinator to EPA. Based upon the needs of the project, the Project Coordinator may designate other personnel to conduct specific project activities, as needed, under his or her supervision. Respondent's Designated Project Coordinator shall be responsible on behalf of Respondent for oversight of the implementation of this Order. Respondent's Designated Project Coordinator shall not be an attorney engaged in the practice of

law. Respondent shall demonstrate that its proposed Designated Project Coordinator has a quality system that complies with the Uniform Federal Policy for Implementing Quality Systems ("UFP-QS"), EPA-505-F-03-001, March 2005. Respondent shall ensure that all Work requiring certification by a professional engineer licensed in the Commonwealth of Puerto Rico shall be reviewed and certified by such. Respondent's Designated Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Order.

33. If Respondent proposes to designate its own Designated Project Coordinator, or if Respondent and/or the Performing Parties jointly request a change in a previously approved Project Coordinator, either such proposed a Designated Project Coordinator shall be subject to approval by EPA in writing. If EPA disapproves a proposed Designated Project Coordinator, Respondent shall propose a different person and notify EPA of that person's name, address, telephone number and qualifications within five (5) days following EPA's disapproval. Should Respondent wish to change its Designated Project Coordinator, EPA must receive prior written notice at least five (5) days before the desired change. All changes of the Designated Project Coordinator shall be subject to EPA approval.

34. EPA correspondence related to this Order will be sent to the Designated Project Coordinator on behalf of Respondent. To the extent possible, the Designated Project Coordinator shall be present on-Site or readily available for EPA to contact during all Working Days and be retained by Respondent at all times until EPA issues a notice of completion of the Work in accordance with Paragraph 95. Notice by EPA in writing to the Designated Project Coordinator shall be deemed notice to Respondent for all matters relating to the Work under this Order and shall be deemed effective upon receipt.

35. All activities required of Respondent under the terms of this Order shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by Federal, Commonwealth and/or local governments consistent with Section 121 of CERCLA, 42 U.S.C. § 9621, and all Work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

36. Respondent shall retain at least one contractor to perform the Work. Respondent shall notify EPA of the name and

qualifications of a proposed contractor within seven (7) days of the Effective Date of this Order. Respondent shall also notify EPA of the name and qualifications of any other contractor or subcontractor proposed to perform Work under this Order at least five (5) days prior to commencement of such Work.

37. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors proposed by Respondent to conduct the Work. If EPA disapproves in writing of any of Respondent's proposed contractors to conduct the Work, Respondent shall propose a different contractor within five (5) days of receipt of EPA's disapproval.

38. Respondent shall provide a copy of this Order to each contractor and subcontractor approved and retained to perform the Work required by this Order. Respondent shall include in all contracts or subcontracts entered into for Work required under this Order provisions stating that such contractors or subcontractors, including their agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Order and all applicable laws and regulations. Respondent shall be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Order.

B. Description of Work

39. a. Prior to the issuance of this Order, EPA issued the Consent Order, Index Number CERCLA-02-2012-2022, to the Performing Parties which requires the Performing Parties to conduct the same response activities as those required by this Order. Respondent shall make best efforts to coordinate with the Performing Parties. Best efforts to coordinate shall include, at a minimum:

i. communication in writing within ten (10) days of the Effective Date of this Order to the Performing Parties as to Respondent's desire to comply with this Order and to participate in the performance of the Work or, in lieu of performance, to pay for the performance of the Work;

ii. submission within twenty (20) days of the effective date of this Order of a good-faith offer to the Performing Parties to perform the Work, in whole

or in part, or, in lieu of performance, to pay for the Work, in whole or in part; and

iii. engaging in good-faith negotiations with the Performing Parties to perform or, in lieu of performance, to pay for the Work required by this Order if such Performing Parties refuse Respondent's first offer.

b. Respondent shall make best efforts to participate in the performance of the Work with the Performing Parties. Best efforts to participate shall include, at a minimum:

i. performance of the Work as agreed by Respondent and the Performing Parties to be undertaken by Respondent; and

ii. payment of all amounts as agreed by Respondent and the Performing Parties to be paid by Respondent if, in lieu of performance, Respondent has offered to pay for the Work required by this Order, in whole or in part.

c. Respondent shall provide EPA with notice of its intent to comply with this Order, consistent with Paragraph 99, below. In addition, Respondent shall notify EPA in writing within five (5) days of the rejection, if any, by the Performing Parties of Respondent's offer to perform or, in lieu of performance, to pay for the Work.

d. The undertaking or completion of any requirement of this Order by any other person, with or without the participation of Respondent, shall not relieve Respondent of its obligation to perform each and every other requirement of this Order.

e. Respondent is jointly and severally responsible with the Performing Parties for carrying out all activities required by this Order and the SOP (to the extent such activities have not already been completed). Accordingly, any failure to perform, in whole or in part, any requirement of this Order by any other person with whom Respondent is coordinating or participating in the performance of such requirement shall not relieve

Respondent of its obligation to perform each and every requirement of this Order.

40. Respondent shall, in cooperation and coordination with the Performing Parties, perform and complete the remaining portion of the response activities required at the Site in accordance with this Order, CERCLA, the NCP, EPA's relevant guidance documents, and other applicable Federal and State laws and regulations that shall include the following Work:

- a. maintaining access control to the Site until the Work is complete;
- b. completing an ACM survey with the objective of identifying all ACM remaining in the North Tower;
- c. characterizing the impact of the ACM release throughout the building;
- d. decontaminating impacted areas identified during building characterization sampling, which shall include but not be limited to, any applicable and relevant asbestos fibers removal technique(s) as per the Asbestos School Hazard Abatement Reauthorization Act (ASHARA) and applicable CERCLA removal approved clean-up methodologies in order to remove asbestos fibers and materials containing such asbestos fibers;
- d. removing disposing, and/or using in a beneficial means, as appropriate, any hazardous substances found in structures, and containers during performance of the Work;
- e. sampling to ensure that indoor air within building meets risk-based criterion of 0.002 fibers per cubic centimeter utilizing aggressive air sampling procedures to determine appropriateness of building re-occupancy;
- f. characterizing, transporting, and off-Site disposal of the contaminated material and waste generated during building decontamination;
- g. performing air monitoring inside and outside of the building, as appropriate; and

- i. conducting other investigations, studies, and response actions as Respondent may deem appropriate and EPA may approve in accordance with this Order.

41. The Performing Parties have submitted to EPA for review and approval a detailed Site Operating Plan ("SOP") for the Work in accordance with this Order, CERCLA, the NCP, EPA's relevant guidance documents and other applicable Federal and State laws and regulations, and EPA has approved that SOP. Respondent, in cooperation and coordination with the Performing Parties, may utilize the Performing Parties' approved SOP if Respondent and the Performing Parties agree to Respondent so designating the SOP as such. If such an agreement cannot be reached, Respondent shall, within ten (10) days of the Effective Date of this Order, submit to EPA for review and approval a detailed SOP for the Work as set forth above. Such a SOP shall include the following:

- a. a Technical Memorandum explaining the Work to be performed;
- b. a Building Characterization Sampling Plan;
- c. a Site Health and Safety Plan ("HSP");
- d. an Asbestos Removal Action Work Plan to address the impacted areas identified during the building characterization sampling;
- e. a Re-entry/Clearance Building Sampling Plan; and
- f. a Quality Assurance Project Plan ("QAPP"), which shall include a plan for sampling and analysis.

42. If a new SOP is submitted, the Building Characterization Sampling Plan shall discuss the proper sampling methodology and design to be used at each floor. The sampling shall include, but not be limited to, asbestos in air, asbestos dust on smooth/hard surfaces, and asbestos dusts in porous surfaces.

43. If a new SOP is submitted, the Asbestos Removal Action Work Plan shall discuss the proper characterization, staging, handling, sampling and analysis of all materials containing asbestos at the Site, and at a minimum, address the following:

a. mobilization, including set-up of offices, as necessary to properly support activities under this Order and establishment of work zones including, but not limited to a support zone, contamination reduction zone, and exclusion zone;

b. construction of temporary containment barrier;

c. proposed schedule for the completion of all Work required under this Order. The schedule shall provide for completion of all field work no later than sixty (60) days from the date of approval of the SOP;

d. decontamination requirements including detailed procedures for construction of the decontamination area and the final decontamination of all personnel and equipment used at the Site during all field activities including exiting the hot zone;

e. cleaning and clearance certification of each individual floor, elevator shafts, elevator cabins, elevator pits, air Conditioning system (as described in the work plan), and the elevator machine room;

f. procedures for handling and storing of hazardous substances, including decontamination materials or wastes, to prevent the release of hazardous substances to the environment; and

g. transportation and disposal procedures for the proper transportation and disposal of asbestos and any wastes generated during the Work. Procedures shall address at a minimum the identification of the proposed disposal facilities for all waste streams, waste profiling, analytical characterization of each waste stream, and appropriate documentation to demonstrate proper management of aforementioned materials.

44. Health and Safety Plan. If a new HSP is submitted, Respondent shall, within ten (10) days after the Effective Date, submit for EPA review and comment an HSP that ensures the protection of the public health and safety during performance of the Work under this Order. The HSP shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the HSP shall

comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the HSP shall also include contingency planning. Respondent shall incorporate all changes to the HSP recommended by EPA and shall implement the HSP for the duration of the removal action. The HSP shall also include, but not be limited to:

- a. ensuring that all contractors comply with OSHA's occupational safety regulations to protect workers including, but not limited to, using certified asbestos handlers with documentation of their training courses, current medical evaluations, and respirator fit tests;
- b. ensuring that all contractors have the proper asbestos abatement licensing required by the Commonwealth of Puerto Rico;
- c. using appropriate measures for containment, personal and waste decontamination units, and High Efficiency Particulate Air filtered units for all operational areas; and
- d. providing for a continuously monitored air sampling program that will identify any potential off-site fugitive releases that may impact public health and the environment.

45. If a new QAPP is submitted, the new QAPP shall satisfy the following requirements:

- a. all sampling and analyses performed pursuant to this Order shall conform to EPA policy and guidance regarding sampling, quality assurance, quality control, data validation, and chain of custody procedures. Respondent shall incorporate these procedures in accordance with the UFP-QS, EPA-505-F-03-001, March 2005; Uniform Federal Policy for Quality Assurance Project Plans, Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005 or newer; and other guidance documents referenced in the aforementioned guidance documents. Subsequent amendments to the above, upon notification by EPA to Respondent of such amendments, shall apply only to procedures conducted after such notification;

- b. if performance of any subsequent phase of the work required by this Order requires alteration of the QAPP, Respondent shall submit to EPA for review and approval proposed amendments to the QAPP;
- c. Respondent shall conduct the appropriate level of data verification/validation and provide the specified data deliverables as provided in the EPA-approved QAPP;
- d. the QAPP shall require that any laboratory utilized by Respondent is certified for the matrix/analyses which are to be conducted for any work performed pursuant to this Order, by one of the following accreditation/ certification programs: USEPA Contract Laboratory Program ("CLP"), National Environmental Laboratory Accreditation Program, American Association for Laboratory Accreditation, or a certification issued by a program conducted by a state, and acceptable to EPA, for the analytic services to be provided. The QAPP shall require the Respondent to submit laboratory certificates from such accreditation programs that are valid at the time samples are analyzed. If a specific analytical service is unavailable from a certified laboratory, EPA may within its discretion, approve Respondent's utilization of a laboratory that is not certified. EPA approval shall be based on Respondent's submittal of a written request, submittal of the laboratory quality assurance plan, and the laboratory's demonstration of capability through the analysis of Performance Evaluation samples for the constituents of concern;
- e. in its contract(s) with laboratories utilized for the analyses of samples, Respondent shall require granting access to USEPA personnel and authorized representatives of the USEPA to the laboratories for the purpose of ensuring the accuracy of laboratory results related to the Site; and
- f. for any analytical work performed under this Order, including but not limited to that performed in a fixed laboratory, in a mobile laboratory, or in on-site screening analyses, Respondent shall submit to EPA, within thirty (30) days after acceptance of the analytical results, a "Non-CLP Superfund Analytical Services Tracking System" form with respect to each laboratory utilized during a sampling event. Each such form shall be submitted to the

EPA OSC, and a copy of the form and transmittal letter shall also be sent to:

Regional Sample Control Center Coordinator (RSCC)
USEPA, Division of Environmental Science and
Assessment, MS-215
2890 Woodbridge Avenue
Edison, New Jersey 08837

46. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing Work under this Order. Respondent shall notify EPA not less than seven (7) days in advance of any sample collection activity.

47. If Respondent does not, in cooperation and coordination with the Performing Parties, utilize the Performing Parties' approved SOP and elect to submit a new SOP, EPA will either approve the SOP or require modifications thereto pursuant to Section D. (Plans and Reports Requiring EPA Approval), below. Upon its approval by EPA, the SOP shall be deemed to be incorporated into and an enforceable part of this Order.

48. Within five (5) days after EPA's approval of such a new SOP, if not already commenced, Respondent shall commence the Work described in the EPA-approved SOP in cooperation and coordination with the Performing Parties. Respondent shall fully implement the EPA-approved SOP in accordance with the terms and schedule therein and in accordance with this Order. All Work requirements of this Order shall be completed within one (1) month of the Effective Date of Order.

49. Respondent shall notify EPA of the names and addresses of all off-Site Waste treatment, storage, or disposal facilities selected by Respondent to receive Wastes from the Site. Respondent shall provide such notification to EPA for approval at least five (5) days prior to off-Site shipment of such Wastes.

50. At the time of completion of all activities required by this Order, demobilization shall include sampling, if deemed necessary by EPA, and proper disposal or decontamination of protective clothing, remaining laboratory samples taken pursuant

to this Order, and any equipment or structures constructed to facilitate the cleanup.

51. Respondent shall conduct the Work required hereunder in accordance with CERCLA and the NCP, and in addition to guidance documents referenced above, EPA Region 2's "Clean and Green Policy" which may be found at <http://epa.gov/region2/superfund/greenremediation/policy.html>, and Guide to Management of Investigation-Derived Wastes (OSWER Publication 9345.3-03FS, January 1992), as they may be amended or modified by EPA.

C. On-Scene Coordinator, Other Personnel, and Modifications to EPA-Approved SOP

52. All activities required of Respondent under the terms of this Order shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by the Federal government and the Commonwealth of Puerto Rico, and all work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

53. The current EPA OSC for the Site is: Angel C. Rodriguez, of the Removal and Remediation Branch of the Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region 2, City View Plaza II, Suite 7000, #48, Road 165, Km. 1.2, Guaynabo, Puerto Rico, 00968-8069, Phone (787) 977-5830. EPA will notify Respondent's Project Coordinator if EPA designates a different OSC for this Site.

54. EPA, including the OSC and/or his authorized representative, will conduct oversight of the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct the Work required by this Order, or to direct any other response action undertaken by EPA or Respondent at the Site consistent with this Order. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

55. As appropriate during the course of implementation of the actions required of Respondent pursuant to this Order, Respondent or its consultants or contractors, acting through the Project Coordinator, may confer with EPA concerning the required

actions. Based upon new circumstances or new information not in the possession of EPA on the Effective Date of this Order, the Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved SOP. Only modifications approved by EPA shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated into this Order and shall be implemented by Respondent.

D. Plans And Reports Requiring EPA Approval

56. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Order, Respondent shall have seven (7) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondent shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondent a written statement to that effect.

57. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order is disapproved by EPA, even after being resubmitted following Respondent's receipt of EPA's comments on the initial submittal, Respondent shall be deemed to be out of compliance with this Order. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondent to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and seek to recover the costs of doing so from Respondent. Respondent shall implement any such item(s) as amended or developed by EPA.

58. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Order. EPA may modify those documents and/or perform or require the performance of additional work unilaterally.

59. All plans, reports and other submittals required to be submitted to EPA pursuant to this Order, upon approval by EPA,

shall be deemed to be incorporated into and an enforceable part of this Order.

VII. REPORTING

60. Commencing on the tenth day of the month after the Effective Date of this Order, unless there is work at the Site, Respondent shall provide monthly progress reports. However, during the implementation of this Order, when Respondent is engaged in active field work, Respondent shall provide EPA with daily oral progress reports, as well as written progress reports every seven (7) days. The first written progress report during active field work shall be submitted within seven (7) days of the commencement of field work. All progress reports shall fully describe all actions and activities undertaken pursuant to this Order. Such progress reports shall, among other things: (a) describe the actions taken toward achieving compliance with this Order during the previous week; (b) include all results of sampling and tests and all other data received by Respondent after the most recent progress report submitted to EPA; (c) describe all actions which are scheduled for the next week; (d) provide other information relating to the progress of Work as is customary in the industry; and (e) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays.

61. Respondent shall provide EPA with at least one (1) week advance notice of any change in the schedule.

62. The Final Report referred to in Paragraph 64, below, and other documents submitted by Respondent to EPA which purport to document Respondent's compliance with the terms of this Order shall be signed by a responsible official of Respondent or by the Project Coordinator designated pursuant to Paragraph 32. For purposes of this Paragraph, a responsible official is an official who is in charge of a principal business function.

63. The SOP, the Final Report, and other documents required to be submitted to EPA under this Order shall be sent to the following:

3 copies to:

U.S. Environmental Protection Agency Region 2
Caribbean Environmental Protection Division
City View Plaza, Suite 7000
#48, Road 165, Km. 1.2,
Guaynabo, Puerto Rico, 00968-8069
Attention: Angel C. Rodriguez, OSC

1 copy to:

U.S. Environmental Protection Agency Region 2
Caribbean Environmental Protection Division
City View Plaza, Suite 7000
#48, Road 165, Km. 1.2,
Guaynabo, Puerto Rico, 00968-8069
Attention: Lourdes del Carmen Rodriguez, Esq.,
Office of Regional Counsel

2 copies to:

Puerto Rico Environmental Quality Board
Environmental Emergency Response Area
P.O. Box 11488
San Juan, Puerto Rico 00910

64. Within fifteen (15) days after completion of the Work required by the SOP, Respondent shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Order. The Final Report shall include:

- a. a synopsis of all Work performed under this Order;
- b. a detailed description of all EPA-approved modifications to the SOP which occurred during Respondent's performance of the Work required under this Order;
- c. a listing of quantities and types of materials removed from the Site or handled on-Site;
- d. a discussion of removal and disposal options considered for those materials;

- e. a listing of the ultimate destination of those materials;
- f. a presentation of the analytical results of all sampling and analyses performed, including QAPP data and chain of custody records;
- g. copies of accompanying appendices containing all relevant documentation generated during the Work (e.g. manifests, bills of lading, invoices, bills, contracts, certificates of destruction, and permits);
- h. an accounting of expenses incurred by Respondent in performing the Work; and
- i. the following certification signed by a person who supervised or directed the preparation of the Final Report:

"I certify that the information contained in and accompanying this document is true, accurate, and complete."

65. EPA either will approve the Final Report or will require modifications thereto pursuant to Paragraphs 56-58, above.

VIII. OVERSIGHT

66. During the implementation of the requirements of this Order, Respondent and its contractor(s) and subcontractors shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the Work being carried out or to be carried out by Respondent, including inspections at the Site and at laboratories where analytical work is being done hereunder.

67. Respondent and its employees, agents, contractor(s) and consultant(s) shall cooperate with EPA in its efforts to oversee Respondent's implementation of this Order.

IX. COMMUNITY RELATIONS

68. Respondent shall cooperate with EPA in providing information relating to the Work required hereunder to the

public. As requested by EPA, Respondent shall participate in the preparation of all appropriate information disseminated to the public, participate in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site, and provide a suitable location for public meetings, as needed.

X. ACCESS TO PROPERTY AND INFORMATION

69. EPA, EQB, and their designated representatives, including, but not limited to, employees, agents, contractor(s), and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Order. Respondent shall at all times permit EPA, EQB, and their designated representatives full access to and freedom of movement at the Site and any other premises where Work under this Order is to be performed for purposes of inspecting or observing Respondent's progress in implementing the requirements of this Order, verifying the information submitted to EPA by Respondent, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Order.

70. In the event that action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain access agreements from the present owners within twenty (20) days of the Effective Date of this Order for purposes of implementing the requirements of this Order. Such agreements shall provide access not only for Respondent, but also for EPA and its designated representatives or agents, as well as EQB and its designated representatives or agents. Such agreements shall specify that Respondent is not EPA's representatives with respect to liability associated with Site activities. If such access agreements are not obtained by Respondent within the time period specified herein, Respondent shall immediately notify EPA of its failure to obtain access and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondent, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondent cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondent shall

perform all other activities not requiring access to that property. Respondent shall integrate the results of any such tasks undertaken by EPA into their reports and deliverables.

71. Upon request, Respondent shall provide EPA with access to all records and documentation related to the conditions at the Site, hazardous substances found at or released from the Site, and the actions conducted pursuant to this Order except for those items, if any, subject to the attorney-client or attorney work product privileges. Nothing herein shall preclude Respondent from asserting a business confidentiality claim pursuant to 40 C.F.R. Part 2, Subpart B. All data, information, and records created, maintained, or received by Respondent or its contractor(s) or consultant(s) in connection with implementation of the Work under this Order, including, but not limited to, contractual documents, invoices, receipts, work orders, and disposal records shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this Paragraph. EPA shall be permitted to copy all such documents. Respondent shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Respondent or its contractor(s), or on Respondent's behalf, in connection with the implementation of this Order.

72. Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION, DOCUMENTATION, AVAILABILITY OF INFORMATION

73. Respondent shall preserve all documents and information relating to Work performed under this Order, or relating to waste materials found on or released from the Site, for six (6) years after completion of the Work required by this Order. At the end of the six (6) year period, Respondent shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondent shall provide EPA with the originals or copies of such documents and information.

74. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public

unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all such documents to EQB, and EQB may make those documents available to the public unless Respondent conforms with applicable Commonwealth law and regulations regarding confidentiality. Respondent shall not assert a claim of confidentiality regarding any monitoring or sampling data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific or engineering data relating to the Work performed hereunder. Upon request of EPA and subject to any claims of applicable privilege(s), Respondent shall submit to EPA all documents in its possession, custody, or control relating to (1) Respondent's offers to any performing party(ies) to perform or to pay for, or (2) Respondent's performance of or payment for, the Work required by this Order in conjunction with Performing Party.

XII. OFF-SITE SHIPMENTS

75. All hazardous substances and pollutants or contaminants removed from the Site pursuant to this Order for off-Site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with: (a) Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3); (b) Section 300.440 of the NCP; (c) the CAA; (d) RCRA; (e) Toxic Substances Control Act; and (f) all other applicable Federal and Commonwealth requirements.

76. If hazardous substances from the Site are to be shipped outside of Puerto Rico, Respondent shall provide prior notification of such Waste shipments in accordance with the EPA Memorandum entitled "Notification of Out-of-State Shipments of Superfund Site Wastes" (OSWER Directive 9330.2-07, September 14, 1989). At least five (5) Working Days prior to such Waste shipments, Respondent shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the Wastes are to be shipped; (b) the type and quantity of Waste to be shipped; (c) the expected schedule for the Waste shipments; (d) the method of transportation and name of transporter; and (e) the treatment and/or disposal method of the Waste streams.

77. Certificates of destruction must be provided to EPA upon Respondent's receipt of such. These certificates must be included in the weekly progress reports and in the Final Report.

XIII. COMPLIANCE WITH OTHER LAWS

78. All actions required pursuant to this Order shall be performed in accordance with all applicable Federal and Commonwealth laws and regulations except as provided in CERCLA § 121(e)(1), 42 U.S.C. § 9621(e)(1), and 40 C.F.R. § 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, and considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under Federal environmental or Commonwealth environmental laws. (See "Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

79. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work requires a Federal or Commonwealth permit or approval, Respondent shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, nor shall it be construed to be, a permit issued pursuant to any Federal or Commonwealth statute or regulation.

XIV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

80. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, the telephone number of which is (800) 424-8802, Respondent shall immediately orally notify the Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA, Region 2, at (732) 321-6656 of the incident or Site conditions. Respondent shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting

requirements of this Paragraph are in addition to, not in lieu of, reporting under CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

81. In the event of any action or occurrence during Respondent's performance of the requirements of this Order which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding Paragraph. Respondent shall take such action in accordance with applicable provisions of this Order including, but not limited to, the Site HSP. In the event that EPA determines that there is a threat to human health or the environment posed by: (a) the activities performed pursuant to this Order, (b) significant changes in conditions at the Site, or (c) emergency circumstances occurring at the Site, EPA may direct Respondent to stop further implementation of any actions pursuant to this Order or to take other and further actions reasonably necessary to abate the threat.

82. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XV. MODIFICATIONS

83. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain such formal approval as may be required by this Order and to comply with all requirements of this Order.

XVI. DELAY IN PERFORMANCE

84. Any delay in performance of the Work under this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of Paragraph 85, below, shall be considered a violation of this Order. Any delay in performance of this Order

shall not affect Respondent's obligations to perform all obligations fully under the terms and conditions of this Order.

85. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's OSC as soon as Respondent knows that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within two (2) days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of the delay, any justification for the delay, any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that have been or will be taken to mitigate the effect of the delay. Increased cost or expense associated with the implementation of the activities called for in this Order is not a justification for any delay in performance.

XVII. ENFORCEMENT AND RESERVATION OF RIGHTS

86. Notwithstanding any other provision of this Order, failure of Respondent to comply with any provision of this Order may subject Respondent to civil penalties of up to thirty-seven thousand five hundred dollars (\$37,500) per violation per day, as provided in Sections 109 and 122(1) of CERCLA, 42 U.S.C. §§ 9609 and 9622(1), and the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 74 Fed. Reg. 626 (January 7, 2009)), unless such failure to comply is excused by EPA. Respondent may also be subject to punitive damages in an amount at least equal to but not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Order, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 and 122 of CERCLA, 42 U.S.C. §§ 9606 and 9622.

87. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened

release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site.

XVIII. OTHER CLAIMS

88. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent or Respondent's employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this Order. The United States or EPA shall not be held out as or deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

89. Nothing in this Order constitutes or shall be construed as a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order for any liability that Respondent or other persons may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for injunctive relief, costs, damages, and interest under Sections 106(a) and 107 of CERCLA, 42 U.S.C. §§ 9606(a) and 9607. Nothing herein shall constitute a finding that Respondent is the only responsible party with respect to the release and threatened release of hazardous substances at and from the Site.

90. Nothing in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

91. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2), and 40 CFR § 300.700(d).

XIX. INSURANCE

92. At least two (2) days prior to commencing any Work at the Site, Respondent shall submit to EPA a certification that Respondent or its contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

XX. FINANCIAL ASSURANCE

93. Respondent shall demonstrate its ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within fourteen (14) days of the Effective Date of this Order one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondent has sufficient assets available to perform the Work. Respondent shall demonstrate financial assurance in an amount no less than \$400,000, which is the estimated cost of the Work to be performed under this Order. If EPA determines that the financial assurances submitted by Respondent pursuant to this Paragraph are inadequate, Respondent shall, within fourteen (14) days after receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this Paragraph. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within thirty (30) days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Order.

XXI. TERMINATION AND SATISFACTION

94. Upon a determination by EPA (following its receipt of the Final Report referred to in Paragraph 64, above) that the Work required pursuant to this Order has been fully carried out in

accordance with this Order, EPA will so notify Respondent in writing.

XXII. OPPORTUNITY TO CONFER, EFFECTIVE DATE

95. This Order shall be effective five (5) days after receipt by Respondent, unless a conference is timely requested pursuant to Paragraph 98 below. If such a conference is timely requested, this Order shall become effective three (3) days following the date the conference is held, unless the Effective Date is modified or extended by EPA or this Order is revoked. All times for performance of ordered activities shall be calculated from this Effective Date.

96. Respondent may, within five (5) days after receipt of this Order, request a conference with EPA to discuss this Order. If requested, the conference shall occur within three (3) days of Respondent's request for a conference, unless otherwise mutually agreed to.

97. The purpose and scope of the conference is to discuss issues involving the implementation of the Work required by this Order and the extent to which Respondent intends to comply with this Order. The conference is not intended to be a forum for discussing liability issues or whether the Order should have been issued. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representative.

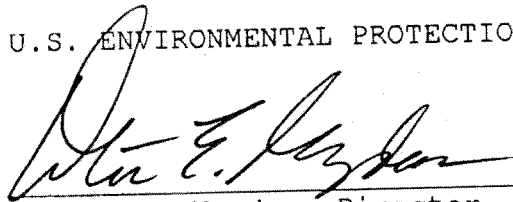
98. A request for a conference must be made by telephone to Lourdes del Carmen Rodriguez, Assistant Regional Counsel, Office of Regional Counsel, EPA Region 2, telephone (787) 977-5819, followed by written confirmation done by electronic mail that day to Ms. Rodriguez at rodriguez.lourdes@epa.gov.

XXIII. NOTICE OF INTENT TO COMPLY

99. Respondent shall provide, not later than three (3) days after the Effective Date of this Order, written notice to EPA stating whether it will comply with the terms of this Order. If Respondent does not unequivocally commit to perform the work

required by this Order, it shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondent's written notice shall describe, using facts that exist on or prior to the Effective Date of this Order, any "sufficient cause" defenses asserted by Respondent under Sections 106(b) and 107(c)(3) of CERCLA. Respondent's written notice shall be sent to the EPA addressees listed in Paragraph 63, above. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be an acceptance of Respondent's assertions.

U.S. ENVIRONMENTAL PROTECTION AGENCY, Region 2



Walter E. Mugdan, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region 2

FEB. 28, 2013

Date of Issuance